Filed 12/7/15 In re N.S. CA4/2

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| In re N.S., a Person Coming Under the Juvenile Court Law. | |
| RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>B.P.,<br><br>Defendant and Appellant. | E063281<br><br>(Super.Ct.No. RIJ1200803)<br><br>OPINION |

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson, Judge. Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Carole Nunes Fong, Deputy County Counsel for Plaintiff and Respondent.

B.P. (Mother) appeals a judgment after the dispositional hearing at which the juvenile court denied her reunification services for her child N.S. (Minor) (a girl, born Oct. 2014) pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(10).[1] Mother contends on appeal that the juvenile court erred by denying reunification services because she made reasonable efforts to correct the problems that led to Minor's siblings being removed from her care in a prior dependency case. Mother also contends it was in Minor's best interest to grant reunification services. We affirm the denial of reunification services to Mother.

## FACTUAL AND PROCEDURAL HISTORY

### A. DETENTION

Minor was detained from Mother and D.S. (Father) on November 3, 2014, by the Riverside County Department of Public Social Services (Department). Minor was detained because Mother was involved with the Department for Minor's siblings. Mother had admitted herself into MFI Recovery Center, which was a women's inpatient treatment center, and Minor was with her in the treatment center.

Mother became involved with the Department for Minor's three siblings—eight-year-old B.S., five-year-old E.B., and four-year-old V.B.—in 2012. On August 3, 2012, a 911 call was made reporting that the father of E.B. and V.B., S.B., was beating-up Mother. When the police arrived, Mother could not remember what had happened. S.B.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

reported that someone else beat Mother up. The family was living in their car. B.S. reported that Mother and S.B. had been arguing about where to park and sleep for the night. Mother was holding B.S. S.B. hit Mother while she was still holding B.S. B.S. ran and hid behind a building. Mother ran away from S.B. However, S.B. caught up to Mother and hit her in the face. She fell to the ground. He then kicked her in the face. Mother was taken to the hospital.

On August 6, 2012, a section 300 petition was filed for B.S., E.B. and V.B. B.S.'s father, P.S., was named the presumed father. The Department alleged that Mother and S.B. were homeless, that they both used marijuana and were involved in acts of domestic violence. Mother and S.B. were given 12 months of reunification services. The reunification services for all three siblings were terminated at a hearing on October 30, 2013.[2] The social worker assigned to the case for the three siblings reported that Mother had not completed her case plan and was inconsistent in her visits.

Mother was ordered to have no contact with B.S., E.B. and V.B. A restraining order was sought on October 10, 2014, restraining Mother from trying to contact the children at the foster home. The matter was set to be heard for a selection and implementation hearing on November 19, 2014.

[2] Although the clerk's transcript lists the date of termination of services as October 30, 2014, it is clear it was October 30, 2013.

Mother's history with the Department prior to 2012 was also detailed in the detention report. On March 15, 2010, Mother was giving E.B., who was seven months old at the time, a bath. Mother left E.B. unattended while she put some cleaning supplies away. When she returned, E.B. was face up in the bath water unconscious. Mother called 911 while S.B. performed CPR. E.B. was breathing and crying when paramedics arrived. Mother was five months pregnant at the time. Both S.B. and Mother admitted using marijuana. The family agreed to participate in family maintenance services that included parenting skills training and drug testing. The case was closed in May 2010 because Mother and S.B. refused to participate in services.

Other reports were made to the Department by an unnamed source. In April 2011, the reporting party stated that Mother had been seen running from the house to get the family pit bull. E.B. was seen running after her and almost got hit by a car. There were also reports that Mother did not regularly change E.B.'s diaper and poorly supervised him. The Department found the allegations unfounded. It was also reported in 2012, that Mother and S.B. were neglecting B.S., E.B. and V.B. They were using marijuana. The Department investigated and found that the children were being well taken care of. Mother and S.B. had medical marijuana certificates and kept their drugs locked up.

Mother was interviewed at MFI on November 3, 2014. Mother was not sure why the Department was involved with Minor because Mother was in the residential treatment program. Mother reported that her delivery of Minor was normal and that she was breastfeeding. Mother had enrolled at MFI on October 2, 2014. She enrolled because she wanted to address abuse she suffered as a child and to develop a healthy relationship

with Father. Father and Mother had been in a relationship for over one year. They had known each other since childhood. Mother insisted that her relationship with Father was different from her prior relationships. Mother reported that Father was also enrolled at MFI to support her; he did not have a drug problem.

Mother did not want to discuss the case involving Minor's three siblings. Mother reported that she and Minor would move in with the paternal grandparents once she completed her stay at MFI. Mother had a medical marijuana card for pain. She admitted having a DUI arrest, and she stated that she was on probation. Mother and Minor had tested negative for drugs while at MFI. Mother also told the social worker that she had enrolled in MFI because another social worker advised her she could keep Minor if she enrolled, despite the ongoing case with Minor's siblings. Minor appeared to be bonded to Mother; Minor appeared clean and well cared for.

Father was also interviewed on the day that Minor was taken from the custody of Mother. He was emotionally distressed and tearful. Father denied any drug history and only had a prior arrest for petty theft. Father had enrolled in the MFI program to help Mother with her issues. It was confirmed by MFI that he voluntarily enrolled in the program. Father had clean drug tests and was doing well in the program.

A preliminary criminal history showed that Mother had prior convictions for taking a vehicle without the owner's consent, several convictions for receiving a stolen vehicle, battery, and being under the influence of a controlled substance.

The Department was concerned that Mother had unresolved substance abuse issues, a history of poor supervision, domestic violence issues, and had been unsuccessful in completing her case plan for Minor's siblings. A permanent plan of adoption/legal guardianship had been recommended for Minor's siblings.

On November 5, 2014, the Department filed a section 300 petition against Father and Mother for Minor. It was alleged pursuant to section 300, subdivision (b) that Mother had a history with the Department for Minor's siblings and failed to benefit from services, placing Minor at risk of similar harm; Mother had an unresolved substance abuse problem; Mother had a history of engaging in acts of domestic violence; Mother had an extensive criminal history; and Father also had a history of criminal arrests and convictions, and a history of abusing controlled substances. It was also alleged pursuant to section 300, subdivision (j) that Minor's siblings had been abused and/or neglected and that there was substantial risk that Minor would suffer similar harm.

The detention hearing on the petition was held on November 6, 2014. The juvenile court found a prima facie case for detention. Father was named the presumed father of Minor. Father signed a statement that he was Minor's father.

B. JURISDICTIONAL/DISPOSITIONAL REPORTS AND JURISDICTION HEARING

After the detention hearing, the juvenile court determined that legal guardianship for B.S. was appropriate. Further, the juvenile court issued a permanent restraining order keeping Mother from having contact with B.S. and his legal guardian except during court-ordered visitation. At the hearing, it was reported that Mother and Father were seen

driving on the street where the foster mother lived. The dependency was terminated as to B.S.[3]

A jurisdiction/disposition report in this case was filed on November 25, 2014. The Department recommended that Father receive reunification services. The Department recommended that Mother be denied reunification services pursuant to section 361.5, subdivision (b)(10).

Mother's additional convictions were detailed in the report. This included the recent DUI arrest. Minor was developing normally.

Mother was interviewed on November 20, 2014. Mother did not appear to be forthcoming with information in her interview. She declined to be interviewed about the dependency proceedings involving Minor's siblings. Mother had eight negative drug tests while at MFI between October and November 2014. Mother had denied that she engaged in domestic violence, but B.S. had witnessed the abuse. Further, Mother was treated at the hospital. She had a one and one-half inch laceration over her right eye that required stitches, a bite mark on her forearm, and an abrasion on her arm.

Mother had reported that she was raised by her maternal grandmother. She had been sexually abused by an uncle when she was younger. Mother was unemployed. She had a medical marijuana card for back pain. She was taking Vicodin for the pain from the domestic violence acts. Minor had no drugs in her system when she was born.

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[3] There is nothing in the record as to the outcome of the dependency involving V.B. and E.B., but it is apparent Mother did not regain custody.

The Department recommended no reunification services be granted to Mother due to the failure to participate and complete prior family reunification services. She was not consistent in visitation with the older siblings. Mother did not want to speak with the Department or develop a case plan. Further, Mother had an extensive criminal history and history of substance abuse. She was arrested for driving under the influence while she was involved in the dependency with the three siblings.

An addendum report was submitted on January 5, 2015. Father wanted custody of Minor and was completing his services in order to take custody of her.

On December 15, 2014, Mother met with the social worker from the Department to discuss her case plan. Mother had plans to live with her father after completing the inpatient MFI program. She also planned to enroll in MFI's intensive outpatient program. Mother met with the social worker again on December 23, 2014. She was living with her father, and was still unemployed.

The contested jurisdiction/dispositional hearing was held on January 8, 2015.[4] The juvenile court agreed to split the jurisdiction and disposition hearings. Mother submitted on jurisdiction. Mother wanted to present evidence for the disposition hearing regarding her progress at MFI both in the inpatient and outpatient programs. Father objected to the allegations in the section 300 petition. The juvenile court found the section 300 subdivision (b) and (j) allegations true against both Father and Mother.

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[4] At the hearing, the juvenile court allowed the Department to file an amended section 300 petition deleting some of the language in the allegations against Mother under section 300, subdivision (b). They have no bearing on the resolution of this case.

An addendum report was filed on February 6, 2015. The Department continued to recommend no reunification services to Mother pursuant to section 361.5, subdivision (b)(10). A supervised visit with Minor and Mother showed they were appropriately bonded. Mother was no longer breastfeeding Minor. Mother had missed one visitation because she said she was looking for a job. Mother continued to test negative on drug tests and to participate in the MFI program.

The Department stated it was concerned that Mother had not demonstrated her ability to provide a safe environment for Minor. The Department was concerned about the restraining order obtained against Mother for B.S. Further, she did not reunify with Minor's siblings despite reunification services.

The disposition hearing was continued because the Department was assessing whether to place Minor with Father. Father insisted he was no longer in a relationship with Mother.

An addendum report was filed on March 6, 2015. Father had moved into an apartment that was sufficient for caring for Minor. Mother had continued to attend MFI classes. Mother had participated in five sessions of individual counseling, and received numerous certificates of achievement from MFI. These included completing six-week courses in domestic violence, criminal addictive thinking, trauma, anger management, relapse prevention, 12-step education, codependency, healthy relationship, coping skills, self-esteem, parenting, and early recovery. Mother had a visit with Minor, which was appropriate. Mother had gotten a job. The Department continued to express concern about Mother being able to care for Minor based on the prior case involving the siblings

and her inability to complete services. Father wanted custody of Minor and agreed to set boundaries with Mother.

An addendum report was filed on March 26, 2015. Father had been having overnight visits with Minor and they were going well. He was securing child care for Minor while he would be working. Father's home was appropriate for Minor's care. Mother had been consistent with visitation with Minor during the reporting period.

C. DISPOSITION HEARING

The disposition hearing was held on April 1, 2015. Father had secured child care for Minor. The Department recommended returning Minor to the care of Father under a family maintenance plan. The Department recommended no reunification services for Mother.

Mother agreed with family maintenance with Father. However, Mother objected to the refusal to grant reunification services. Mother's counsel argued that the "code" indicates that Mother had to make reasonable efforts to treat the condition or problem that originally led to the detention. Mother's counsel had submitted ample documentation that she had overcome the problems that led to the detention. She had participated in MFI. She was working and had a stable home. Mother's counsel recognized the past problems with the Department, but in order to receive reunification services, Mother only had to make reasonable efforts. Moreover, it was in Minor's best interest to have a relationship with Mother. Mother submitted additional information from MFI, that she was participating in MFI's outpatient program.

Minor's counsel agreed that Mother had been working hard to turn her life around. However, it was only in November 2014 that a restraining order had to be obtained in order to keep her from B.S. Minor's counsel argued it was "premature" to offer services to Mother. Minor's counsel stated, "And quite frankly in looking at everything she's done, I'm not even sure what services we would be offering her because it sounds like she is doing everything independently."

The Department argued that Mother had been involved with the juvenile court for five years. She only went back into a drug program when Minor was born. She had prior failures in the drug program and had lost custody of her three other children.

The juvenile court first stated, "It's not lost on the Court that mom has received services over and over and over again, and we have to keep detaining her, bringing her—back her children. [¶] So I do see that she's made great efforts. However, I don't believe it's enough for the Department to have to once again be obligated to extend services to [M]other. So she's welcome to come on her own. [¶] I will authorize the hair follicle under [Minor]'s case plan so that as we are ready to exit out and make juvenile custody orders, we can see how things have maintained. I'm worried with this starting. It's rather recent based on the history of the family being in court and what she might need in a few months from now. But it's a good start. I do acknowledge that."

The juvenile court ordered Minor be placed with Father and that he participate in family maintenance services. The juvenile court ruled, "Regarding mother, by clear and convincing evidence I am finding that she is described by Section 361[ subdivision](c)(1) and the circumstances stated therein. [¶] Reasonable efforts were made to prevent or eliminate the need to remove [Minor] from mother. Physical custody is removed from her." The juvenile court also ruled, "So the Court is also finding by clear and convincing evidence that mother is described by Section 361.5[ subdivision](b)(10) and that reunification services are not in the child's best interest."

## DISCUSSION

### A. DENIAL OF REUNIFICATION SERVICES PURSUANT TO SECTION 361.5, SUBDIVISION (B)(10)

Mother insists the record before the juvenile court supported that she made reasonable efforts to correct the problems that led to the removal of Minor's siblings, and the juvenile court erred by denying reunification services to her.

"Ordinarily, when a child is removed from parental custody, the juvenile court must order services to facilitate the reunification of the family." (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.) However, section 361.5, subdivision (b) provides that "Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence," one of the exceptions to reunification services. Mother was denied services under subsection (10) of subdivision (b) which provides as follows: "That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or

guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian."

"'"'Before this subdivision applies, the parent must have had a[t] least one chance to reunify with a different child through the aid of governmental resources and fail to do so. Experience has shown that with certain parents, . . . the risk of recidivism is a very real concern. Therefore, when another child of that same parent is adjudged a dependent child, it is not unreasonable to assume reunification efforts will be unsuccessful.'"'" (*In re Lana S.* (2012) 207 Cal.App.4th 94, 107 (*Lana S.*).)

"The 'reasonable effort to treat' standard found in . . . subdivision (b)(10) [of section 361.5] 'is not synonymous with 'cure.'" (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464.) "The statute provides a 'parent who has worked toward correcting his or her problems an opportunity to have that fact taken into consideration in subsequent proceedings.' [Citation.] To be reasonable, the parent's efforts must be more than 'lackadaisical or half-hearted.'" (*K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393.) Another court has analyzed the reasonable efforts standard and noted that, "[w]e do not read the 'reasonable effort' language in the bypass provisions to mean that any effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is

certainly appropriate for the juvenile court to consider the duration, extent and context of the parent's efforts, as well as any other factors relating to the quality and quantity of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the focus of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the reasonableness of the effort made." (*R.T. v. Superior Court*, *supra*, 202 Cal.App.4th at p. 914, italics omitted.)

The exception under section 361.5, subdivision (b)(10) is subject to a clear and convincing standard of proof. (*Lana S.*, *supra*, 207 Cal.App.4th at p. 106.) "An appellate court reviews a court's findings under section 361.5 for substantial evidence. [Citation.] In so doing, we presume 'in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.'" (*In re G.L.* (2014) 222 Cal.App.4th 1153, 1164.)

Here, the circumstances that led to the removal of V.B., B.S. and E.B. from Mother's custody were serious. Mother had been investigated in 2010 for failing to supervise E.B. while he was in the bath. He was found unconscious and not breathing. At the time, Mother and S.B. both admitted to using marijuana. The record discloses that they were to participate in family maintenance, but the case was closed because they failed to participate.

Two years later, Mother was homeless and was living in her car with S.B. and Minor's siblings. At that time, she was arguing with S.B. in front of the children. She was holding B.S. when S.B. hit her. S.B. then hit her so hard that she had a laceration requiring stitches on her head and could not remember what happened. Mother never acknowledged that the domestic violence occurred despite B.S. witnessing the beating.

Mother failed to complete her services for Minor's siblings. She did not complete the MFI program and she was inconsistent with her visits. Mother's services for Minor's siblings were terminated in October 2013. After the termination of her services, she was arrested for a DUI in August 12, 2014. Mother waited over a year after the termination of her reunification services for Minor's siblings to enroll in the MFI program. Mother advised the social worker that she had enrolled in order to keep Minor, to develop a healthy relationship with Father, and to address her own sexual abuse as a child.

Mother did not want to discuss the prior case involving Minor's siblings with the social worker assigned to Minor's case. At no time did Mother express that she was in the MFI program to address the issues that led to the removal of Minor's siblings. Mother had been involved with the Department since August 2012, but did not begin her effort to address her problems until October 2014. Even though she was in the treatment program, she did not acknowledge that she had lost custody to her three other children, nor the problems that led to their removal.

Further, Mother was clearly only in the process of addressing her substance abuse problems. Mother had a DUI conviction in 2000. She had a conviction of being under the influence of a controlled substance in 2005. On August 12, 2014, she was arrested

for a DUI. Mother had admitted to using marijuana. It was evident Mother had a history of substance abuse. Mother had only been admitted into the MFI program in October 2014, and the disposition hearing was held in April 2015. Despite performing very well in the MFI program, she had only completed six months of the program. Mother had been in the MFI program with Minor's siblings but had failed to complete it.

Minor was only a few days old when she was detained. As such, Mother had only six months during which to complete reunification services. (§ 361.5, subd. (a)(1)(B).) Based on her long history of substance abuse and her abject failure to complete the prior services provided to her in both 2010 and 2012, the trial court could reasonably conclude that Mother's efforts toward alleviating the problems that led to the removal of Minor's siblings from Mother's custody were not sufficient to warrant granting her additional reunification services.

A court of review "will not disturb the [lower] court's determination unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination." (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 881.) "When two or more inferences reasonably can be deduced from the facts, [a reviewing court has] no authority to reweigh the evidence or substitute [its] judgment for that of the juvenile court." (*Ibid.*)

Here, the juvenile court recognized that Mother was making "great efforts" to better her life.[5] However, the juvenile court also properly considered that Mother had failed to complete the services she was previously provided, and that the progress made by Mother was only recent in light of the time that she had been involved with the juvenile court. The juvenile court properly denied Mother reunification services.

B. BEST INTERESTS

Mother contends that the juvenile court erred by also concluding it was in Minor's best interest to deny reunification services.

"Despite the applicability of subdivision (b)(10) . . . of section 361.5, the court retains authority to order services if it finds by clear and convincing evidence they would be in the children's best interests." (*Lana S.*, *supra*, 207 Cal.App.4th at p. 109.) However, once the juvenile court determines that one of the bypass exemptions applies, the rule favoring reunification is replaced by the assumption that offering services would be an unwise use of governmental resources. (*In re A.G.* (2012) 207 Cal.App.4th 276, 281.)

"'The burden is on the parent to . . . show that reunification would serve the best interests of the child.' [Citation.] The best interests determination encompasses a consideration of the parent's current efforts, fitness and history; the seriousness of the problem that led to the dependency; the strength of the parent-child and caretaker-child

[5] Mother contends that the "juvenile court completely overlooked the strides Mother made during the instant case." We disagree. The juvenile court stated on the record that it recognized Mother's efforts.

bonds; and the child's need for stability and continuity. [Citation.] A best interests finding also requires a likelihood that reunification services will succeed. [Citation.] 'In other words, there must be some "reasonable basis to conclude" that reunification is possible before services are offered to a parent who need not be provided them.'" (*In re A.G.*, *supra*, 207 Cal.App.4th at p. 281; see also *In re G.L.*, *supra*, 222 Cal.App.4th at p. 1164.)

"A juvenile court has broad discretion when determining whether further reunification services would be in the best interests of the child . . . . An appellate court will reverse that determination only if the juvenile court abuses its discretion." (*In re William B.* (2008) 163 Cal.App.4th 1220, 1229.)

Mother did not meet her burden of showing it was in Minor's best interest to grant reunification services. It is not disputed that Mother was making progress at MFI and that she was participating in counseling. However, she had a long history with the Department, beginning in 2010. Her substance abuse problems dated back over 10 years. Mother had only shown in the six months since Minor was born that she had made any effort to address her problems.

Additionally, there was not a significant bond between Mother and Minor. Minor was only with Mother for two weeks before she was detained by the Department. Mother had visits with Minor but there was no evidence of a significant bond between Minor and Mother. Further, Minor was only six months old at the time of the disposition hearing and needed stability.

Finally, as stated, Mother had only six months in which to reunify with Minor. The juvenile court could reasonably conclude that Mother would not be successful in addressing the issues that led to the dependency involving Minor's siblings and Minor. We conclude that the juvenile court did not abuse its discretion when it found it was in Minor's best interests not to grant Mother reunification services.

**DISPOSITION**

The juvenile court's orders are affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

KING
J.